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AMENDED IN SENATE JUNE 17, 2008
AMENDED IN ASSEMBLY MAY 23, 2008
AMENDED IN ASSEMBLY APRIL 23, 2008
AMENDED IN ASSEMBLY APRIL 8, 2008
AMENDED IN ASSEMBLY MARCH 24, 2008

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 2866

Introduced by Assembly Member De Leon

February 22, 2008

An act to amend Sections 48000 and 48004 of, and to add Sections ~~40059.5, 48001.5, 48001.5~~ and 48004.5 to, the Public Resources Code, relating to solid waste, ~~and making an appropriation therefor.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 2866, as amended, De Leon. Solid waste: solid waste disposal fees: postclosure trust fund.

~~(1) Existing~~

Existing law, the California Integrated Waste Management Act of 1989, requires an operator of a solid waste disposal facility to pay a quarterly fee to the State Board of Equalization based on the amount of solid waste disposed of at each disposal site. Commencing with the 1995–96 fiscal year, the act requires the California Integrated Waste Management Board to establish the amount of the fee, as specified, and limits the fee to a maximum of \$1.40 per ton. The fees are required to be deposited in the Integrated Waste Management Account (account)

in the Integrated Waste Management Fund, and the board is authorized to expend the money in the account, upon appropriation by the Legislature, to administer and implement the act.

This bill would, on and after July 1, 2009, establish the amount of the fee in an amount of \$2 per ton and would require \$0.60 of that fee after that date to be available for expenditure by the board, upon appropriation by the Legislature, in accordance with a specified schedule.

The bill would require that from July 1, 2009, until June 30, 2012, 25% of the additional fee revenues be expended to fund demonstration projects by operators of certain trucks used at solid waste facilities, for the collection of recyclables, yard waste, and garbage, and for the delivery and servicing of residential and commercial solid waste, recycling, and yard waste containers. The bill would also require this percentage to be used for projects that demonstrate the commercial viability of producing clean transportation fuels.

The bill would require, on and after July 1, 2009, until June 30, ~~2016~~ 2012, that 20% of the additional fee revenues be expended by the board, upon appropriation by the Legislature in the annual Budget Act and would increase that percentage of the additional fee revenues subject to appropriation in the annual Budget Act to 45%, until June 30, ~~2017~~ 2020, and to 100% after July 1, 2020.

The bill would also require, from July 1, 2009, until June 30, 2020, that 30% of the additional fee revenues be expended for ~~compost~~ *organics management* projects that will ~~advance the board's goal of diverting help to divert~~ 50% of compostable organics from land disposal by the year 2020.

The bill would require the board, when awarding grant funds or loans for the demonstration project and compost project, to make not less than 40% available for eligible projects in Southern California and not less than 40% for projects in Northern California, as defined.

The bill would require the board, on and after July 1, 2009, but no later than July 1, 2020, to deposit 25% of the fee revenues in the State Solid Waste Postclosure Trust Fund, which the bill would establish in the State Treasury ~~and continuously appropriate to, for expenditure by the board, upon appropriation by the Legislature.~~ The bill would ~~authorize the board to expend the money in the trust fund to pay for required closure and postclosure activities that have not been performed by the owner of a solid waste landfill, if the solid waste landfill meets certain conditions~~ *require the board to adopt regulations, by July 1,*

2010, to develop criteria for making expenditures from the trust fund. The board would be required to maintain an amount of \$50,000,000 in the trust fund, and if the amount of the fee revenues *and accumulated interest* allocated to the trust fund exceeds that amount, the board would be required to expend those excess amounts upon appropriation by the Legislature in the annual Budget Act, except as specified.

The board would be required to recover from the owner of a solid waste landfill the money expended from the State Solid Waste Postclosure Trust Fund as a result of the landfill owner's failure to comply with a final order from the board and to deposit in the trust fund all funds recovered by the board, less certain actual and necessary costs. The board would be required, by January 1, ~~2010~~, 2011, and by January 1 at least once every 2 years thereafter, to report to the Legislature on matters related to the trust fund.

The bill would additionally specify that the funds in the account may be used by the board, upon appropriation by the Legislature, for grant and loan programs that are authorized or required to be administered by the board pursuant to the act.

~~(2) Under the act, each county, city, or district is authorized to determine aspects of solid waste handling that are of local concern and the means by which the services are to be provided. A solid waste enterprise is a person regularly engaged in the business of providing solid waste handling services.~~

~~This bill would require a permit, contract, or franchise granted by a local agency for solid waste handling services that establishes or regulates the service rates that can be charged by the solid waste enterprise, and any request for a bid or proposal for solid waste handling services, to allow the solid waste enterprise to increase the rates it charges for solid waste collection services to include certain fees, thereby imposing a state-mandated local program by imposing new duties upon local agencies.~~

~~(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: majority. Appropriation: ~~yes~~-no. Fiscal committee: yes. State-mandated local program: ~~yes~~-no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 40059.5 is added to the Public Resources~~
2 ~~Code, to read:~~

3 ~~40059.5. (a) A permit, contract, or franchise granted by a local~~
4 ~~agency for solid waste handling services that establishes or~~
5 ~~regulates the service rates that can be charged by the solid waste~~
6 ~~enterprise, and any request for a bid or proposal for solid waste~~
7 ~~handling services, shall allow the solid waste enterprise to increase~~
8 ~~the rates it charges for solid waste collection services to include~~
9 ~~both of the following:~~

10 ~~(1) The full amount of the fee imposed on the solid waste~~
11 ~~enterprise by the operator of a solid waste disposal facility pursuant~~
12 ~~to Section 48000.~~

13 ~~(2) The full amount of a fee imposed on the solid waste~~
14 ~~enterprise by the operator of a solid waste disposal facility pursuant~~
15 ~~to the provisions of a local permit, statute, or ordinance.~~

16 ~~(b) A permit, contract, or franchise or request granted by a local~~
17 ~~agency for solid waste handling services or a bid or proposal for~~
18 ~~solid waste handling services shall not waive the requirements of~~
19 ~~this section, and any attempted waiver shall be null and void as~~
20 ~~against public policy.~~

21 ~~(c) Except as otherwise expressly provided in this section, the~~
22 ~~requirements of this section do not otherwise alter the authority~~
23 ~~of a local agency to determine aspects of solid waste collection~~
24 ~~and handling pursuant to Section 40059.~~

25 ~~SEC. 2.~~

26 ~~SECTION 1. Section 48000 of the Public Resources Code is~~
27 ~~amended to read:~~

28 ~~48000. (a) An operator of a disposal facility shall pay a fee~~
29 ~~quarterly to the State Board of Equalization that is based on the~~
30 ~~amount, by weight or volumetric equivalent, as determined by the~~
31 ~~board, of all solid waste disposed of at each disposal site.~~

32 ~~(b) Until July 1, 2009, the amount of the fee shall be established~~
33 ~~by the board at an amount that is sufficient to generate revenues~~
34 ~~equivalent to the approved budget for that fiscal year, including a~~
35 ~~prudent reserve, but the fee shall not exceed one dollar and forty~~
36 ~~cents (\$1.40) per ton.~~

37 ~~(c) On and after July 1, 2009, the amount of the fee shall equal~~
38 ~~two dollars (\$2) per ton.~~

(d) The board and the State Board of Equalization shall ensure that all the fees for solid waste imposed pursuant to this section that are collected at a transfer station are paid to the State Board of Equalization in accordance with this article.

(e) Notwithstanding Section 48001, on and after July 1, 2009, an amount of sixty cents (\$0.60) of the fee imposed for each ton of solid waste disposed of at each disposal site shall be available to the board for expenditure pursuant to Section 48001.5.

~~SEC. 3.~~

SEC. 2. Section 48001.5 is added to the Public Resources Code, to read:

48001.5. The fee revenues collected by the State Board of Equalization pursuant to subdivision (e) of Section 48000 shall be available to the board, upon appropriation by the Legislature, for expenditure by the board in accordance with the following:

(a) On and after July 1, 2009, until June 30, 2012, 25 percent of the fee revenues shall be expended, in accordance with the requirements of subdivision (b) of Section 48004.5, to fund both of the following:

(1) (A) Clean fuel demonstration projects by operators of medium- and heavy-duty trucks used at solid waste facilities, operators of medium- and heavy-duty trucks used for the collection of recyclables, yard waste, and garbage, and operators of trucks used for the delivery and servicing of residential and commercial solid waste, recycling, and yard waste containers.

(B) The projects funded pursuant to subparagraph (A) may include, but not be limited to, demonstration projects using low-carbon intensity biofuels, natural gas, waste-derived fuels, ~~hydrogen~~, or hybrid technologies that reduce criteria pollutants ~~or~~ and greenhouse gas emissions.

(2) (A) Projects that demonstrate the commercial viability of producing clean transportation fuels, including ethanol, from municipal solid waste, and converting landfill gas to clean transportation fuels, including compressed natural gas, liquefied natural gas, or methane-based fuels.

(B) A project that utilizes high-temperature thermal technologies is not eligible for funding pursuant to this paragraph.

(b) On and after July 1, 2009, until June 30, 2020, 30 percent of the fee revenues shall be expended by the board, in accordance with the requirements of subdivision (b) of Section 48004.5, for

1 ~~compost projects that will advance the board's goal of diverting~~
2 ~~organics management projects, with emphasis on composting, that~~
3 ~~will help divert 50 percent of compostable organics from land~~
4 ~~disposal by the year 2020.~~

5 (c) (1) On and after July 1, 2009, except as provided in
6 paragraph (5), but no later than July 1, 2020, 25 percent of the fee
7 revenues shall be deposited in the State Solid Waste Postclosure
8 Trust Fund, which is hereby established in the State Treasury and
9 ~~continuously appropriated for expenditure by the board., for~~
10 ~~expenditure by the board, upon appropriation by the Legislature,~~
11 ~~pursuant to this subdivision.~~

12 (2) ~~The board may only expend the money in the State Solid~~
13 ~~Waste Postclosure Trust Fund to pay for required closure and~~
14 ~~postclosure activities that have not been performed by the owner~~
15 ~~of a solid waste landfill. The board may expend these funds only~~
16 ~~for closure and postclosure activities at a solid waste landfill that~~
17 ~~meets the following conditions:~~

18 (A) ~~The solid waste landfill owner has failed to comply with a~~
19 ~~final order issued by the board.~~

20 (B) ~~The board finds that financial assurance mechanisms are~~
21 ~~inadequate to fund necessary compliance activities.~~

22 (C) ~~The board determines that the solid waste landfill was~~
23 ~~operating pursuant to a valid solid waste facilities permit on or~~
24 ~~after January 1, 1990, and was required to have financial assurances~~
25 ~~pursuant to Section 43600.~~

26 (3) ~~For the purposes of this subdivision, a solid waste landfill~~
27 ~~does not include any portion of a landfill that was authorized by~~
28 ~~permit to dispose of hazardous waste.~~

29 (2) *On or before July 1, 2010, the board shall adopt regulations*
30 *to develop criteria for making expenditures from the State Solid*
31 *Waste Postclosure Trust Fund pursuant to this subdivision.*

32 (4) ~~—~~

33 (3) The board shall recover from the solid waste landfill owner
34 the amount of the money expended from the State Solid Waste
35 Postclosure Trust Fund as a result of the landfill owner's failure
36 to comply with a final order issued by the board. The board shall
37 deposit, in the State Solid Waste Postclosure Trust Fund, all funds
38 recovered by the board pursuant to an action authorized by this
39 paragraph against the owner of a solid waste landfill, less the actual

1 and necessary costs incurred by the board in taking the recovery
2 action.

3 ~~(5)–~~

4 (4) The board shall continue to deposit the percentage amount
5 of the fees specified in paragraph (1) to maintain an amount of
6 fifty million dollars (\$50,000,000) in the State Solid Waste
7 Postclosure Trust Fund. If the amount of the fee revenues allocated
8 to the State Solid Waste Postclosure Trust Fund *and accumulated*
9 *interest* exceeds that amount, the board shall expend those excess
10 amounts upon appropriation by the Legislature in the annual
11 Budget Act, but shall recommence deposits into the fund at any
12 time the fund balance is less than forty million dollars
13 (\$40,000,000).

14 ~~(6)–~~

15 (5) On or before January 1, ~~2010~~, 2011, and on or before
16 January 1 every two years thereafter, the board shall report to the
17 Legislature on expenditures made from the State Solid Waste
18 Postclosure Trust Fund, the status of the board's cost recovery
19 actions, and any recommended statutory changes that are required
20 to ensure adequate resources are available to carry out the purposes
21 of the State Solid Waste Postclosure Trust Fund.

22 ~~(7)–~~

23 (6) The Legislature finds and declares all of the following:

24 (A) It is the intent of the Legislature to create and maintain a
25 State Solid Waste Postclosure Trust Fund dedicated exclusively
26 to protecting the General Fund from expenditures resulting from
27 the failure of the owner of a solid waste landfill *who was required*
28 *to maintain evidence of financial ability pursuant to Article 4*
29 *(commencing with Section 43600) of Chapter 2 of Part 4* to comply
30 with a final order from the board relating to compliance with
31 closure and postclosure requirements. The State Solid Waste
32 Postclosure Trust Fund is created so the state may respond rapidly
33 to violations of closure and postclosure requirements, thereby
34 limiting environmental harm and threats to health and safety.

35 (B) It is the intent of the Legislature that this subdivision
36 authorizes a complete cost recovery by the state of expenditures
37 from the State Solid Waste Postclosure Trust Fund and that the
38 State Solid Waste Postclosure Trust Fund be preserved for its
39 intended purpose and that the board monitor and evaluate the scope,
40 size, and effectiveness of the State Solid Waste Postclosure Trust

1 Fund to ensure adequate resources are available to carry out the
2 purposes of the State Solid Waste Postclosure Trust Fund.

3 (d) (1) On and after July 1, 2009, until June 30, ~~2016~~, 2012, 20
4 percent of the fee revenues shall be expended by the board, upon
5 appropriation by the Legislature in the annual Budget Act.

6 (2) On and after July 1, 2012, until June 30, ~~2017~~, 2020, 45
7 percent of the fee revenues shall be expended by the board, upon
8 appropriation by the Legislature in the annual Budget Act.

9 (3) On and after July 1, 2020, 100 percent of the fee revenues
10 shall be expended by the board, upon appropriation by the
11 Legislature in the annual Budget Act.

12 ~~SEC. 4.~~

13 *SEC. 3.* Section 48004 of the Public Resources Code is
14 amended to read:

15 48004. (a) The money in the account shall be used by the
16 board, upon appropriation by the Legislature, for the following
17 purposes:

18 (1) The administration and implementation of this division by
19 the board.

20 (2) The state water board's and regional water board's
21 administration and implementation of Division 7 (commencing
22 with Section 13000) of the Water Code at solid waste disposal
23 sites.

24 (3) Grant and loan programs that are authorized or required to
25 be administered by the board pursuant to this division.

26 (b) It is the intent of the Legislature that an amount which is
27 sufficient to fund state water board and regional water board
28 regulatory activities for solid waste landfills be appropriated from
29 the account by the Legislature in the annual Budget Act. Those
30 persons who are required to pay the fee imposed pursuant to
31 Section 48000 shall not be required to pay the annual fee imposed
32 pursuant to subdivision (d) of Section 13260 of the Water Code
33 with regard to the same discharge.

34 (c) Notwithstanding subdivisions (a) and (b), if the fee
35 established pursuant to Section 48000 does not generate revenues
36 sufficient to fund the programs specified in this section, or if the
37 amount appropriated by the Legislature for these purposes is
38 reduced, those reductions shall be equally and proportionally
39 distributed between funding for the solid waste programs of the
40 state water board and the regional water boards and the board.

1 ~~SEC. 5.~~

2 ~~SEC. 4.~~ Section 48004.5 is added to the Public Resources Code,
3 to read:

4 48004.5. (a) The board may expend moneys in the Integrated
5 Waste Management Account in the Integrated Waste Management
6 Fund and other funds as appropriate, upon appropriation by the
7 Legislature, for purposes of providing grants and loans pursuant
8 to Section 48001.5.

9 (b) (1) When awarding grant funds or loans pursuant to
10 subdivision (a) or (b) of Section 48001.5, the board shall make not
11 less than 40 percent available for eligible projects in Southern
12 California and not less than 40 percent available for projects in
13 Northern California.

14 (2) For the purposes of this subdivision, “Southern California”
15 means the counties of Imperial, Los Angeles, Orange, Riverside,
16 Santa Barbara, San Bernardino, San Diego, and Ventura. “Northern
17 California” means all other California counties.

18 ~~SEC. 6. No reimbursement is required by this act pursuant to~~
19 ~~Section 6 of Article XIII B of the California Constitution because~~
20 ~~a local agency or school district has the authority to levy service~~
21 ~~charges, fees, or assessments sufficient to pay for the program or~~
22 ~~level of service mandated by this act, within the meaning of Section~~
23 ~~17556 of the Government Code.~~